

REMARKS

This amendment is responsive to the Office Action dated December 30, 2008. Claims 17-29, 31-45, and 47-49 are pending. Claim 49 is withdrawn and Applicant reserves the right to pursue it in a divisional application. The remaining claims 17-29, 31-45, and 47-48 are rejected. Reconsideration of this application is respectfully requested for the reasons demonstrated here.

Rejections Under 112

In paragraphs 2 and 3 of the office action, the Examiner rejects claims 17-48 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The Examiner believes that the claims contain subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. In particular, with respect to claim 17, the Examiner indicates that independent claim 17 recites the limitation “*selectively processing the commercial transaction data by first identifying select data including dynamic video and text data relating to one or more vendors and then providing the dynamic video and text to said activate buyer responsive to said commercial transaction data and in some instances selectively routing the active buyer based on the request data via multiple commercial transaction control systems to communicate with one or more widely distributed vendors with capabilities to fulfill a request.*” The Examiner indicates that there is no description of such selective routing of an active buyer to communicate with one or more vendors as taking place after the step of providing identified video and text to the active buyer. The Examiner further indicates that the communication between a buyer and one of a plurality of vendors is a separate operation from the provision of dynamic video and text.

Indeed, Applicant respectfully submits that the claim does not claim that the selective routing of an active buyer to communicate with one or more vendors takes place after providing identified video and text to the active buyer. Applicant appreciates the Examiner’s misunderstanding of the claim and has further amended claim 17 as well as claim 33, to clarify that the claimed method includes the steps whereby commercial transaction data is processed to fulfill a request by first identifying the select data and then providing it to an active buyer to fulfill the request and in some cases in order to fulfill the request, the active buyer is routed to one or more widely distributed vendors.

The Examiner is respectfully requested to reconsider the rejected claims and to withdraw the rejection of the rejected claims under 35 U.S.C. Section 112.

Rejections Under 103

In paragraph 5 of the office action, the Examiner has rejected claims 17-29, and 33-45 under 35 U.S.C. 103(a) as being unpatentable over Smith (US 5,450,123) in view of Grady et al. (US 5,712,906, hereinafter "Grady"). The Examiner indicated that Smith discloses the claimed method with all its steps, except the difference that, Smith does not specify text communications between the vendor and buyer. However, the Examiner alleges that Grady, from the same field of endeavor, teaches the desirability of providing text communications (by email) between terminals (col. 11 , lines 46-47) in addition to video and multimedia communication. Accordingly, the Examiner asserts that it would have been obvious to an artisan of ordinary skill to provide for text communications, as taught by Grady, between the caller and agent stations of Smith in order to provide an additional means of communication.

Governing Criteria

For rejections under 35 U.S.C. Section 103, the establishment of a *prima facie* case of obviousness requires that all the claim limitations must be taught or suggested by the prior art. MPEP § 2143.03 The establishment of a prima facie case of obviousness requires that the claimed combination cannot change the principle of operation of the primary reference or render the reference inoperable for its intended purpose. MPEP § 2143.03.

The Supreme Court set the standard for evaluating obviousness in its recent decision (*KSR International Co. v. Teleflex Inc. et al.* (550 U.S. 127 S. Ct. 1727 (2007), 82 USPQ 2d 1385 (2007)) to be “expansive and flexible” and “functional.” However, the standard is not controlling, rather, the various noted factors only “can” or “might” be indicative of obviousness based on the facts. The Supreme Court in *KSR* enunciated the following principles:

“[w]hen a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, Section 103 likely bars it patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is

beyond his or her skill...[A] court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions.

Simply using the benefit of hindsight in combining references is improper. *In re Lee*, 277 F.3d 1338, 1342-45 (Fed. Cir. 2002); *In re Deminski*, 796 F.2d 436, 442 (Fed. Cir. 1986)). The Supreme Court while recognizing the need “to guard against slipping into the use of hindsight,” acknowledged the following principles:

[r]ejection on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.

[I]t can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.

One of the ways in which a patent’s subject matter can be proved obvious is by noting that there existed at the time of invention a known problem for which there was an obvious solution encompassed by the patent’s claims.

Rather, obviousness is to be determined from the vantage point of a hypothetical person having ordinary skill in the art to which the patent pertains. See 35 U.S.C. § 103(a). The legal construct also presumes that all prior art references in the field of the invention are available to this hypothetical skilled artisan. *In re Carlson*, 983 F.2d 1032, 1038, 25 USPQ 2d 1207, 1211 (Fed. Cir. 1993). The Supreme Court in *KSR* stated that:

a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was independently, known in the prior art.

An examiner may often find every element of a claimed invention in the prior art. “Virtually all [inventions] are combinations of old elements.” *Environmental Designs, Ltd. V. Union Oil Co.*, 713 F.2d 693, 698, 218 USPQ 865, 870 (Fed.Cir. 1983), cert. denied, 464 U.S. 1043 (1984); see also *Richel, Inc. v. Sunspool Corp.*, 714 F.2d 1573, 1579-80, 219 USPQ 8, 12 (Fed.Cir. 1983). If identification of each claimed element in the prior art were sufficient to negate patentability, very few patents would ever issue. Furthermore, rejecting patents solely by

finding prior art corollaries for the claimed elements would permit an examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention. Such an approach would be “an illogical and inappropriate process by which to determine patentability.” *Sensonics, Inc. v. Aerosonic Corp.*, 81 F.3d 1566, 1570, 38 U.S.P.Q.2d 1551, 1554 (Fed.Cir.1996). In other words, the examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed. The Supreme Court in *KSR* has also stated that:

[o]ften, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the market place.

Further, the Supreme Court states that:

The Court relied upon the corollary principle that when the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be nonobvious.

When considering the question of obviousness, further evidence of nonobviousness may also be considered, such as, for example, commercial success of the subject matter. *Perkin-Elmer Corp. v. Computervision Corp.*, 732 F.2d 888, 895 (Fed. Cir. 1984).

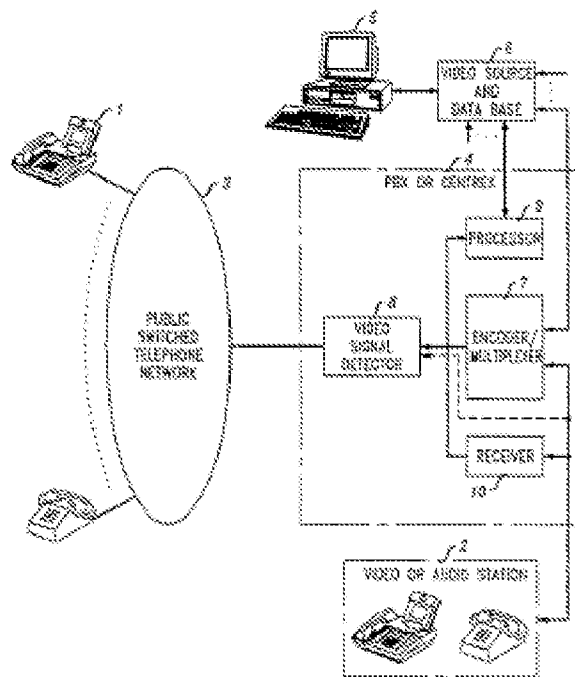
Discussion of the 103 Rejection

With respect to rejected claims 17-29, and 33-45, the Examiner acknowledges that Smith differs from claims 17 and 33 in that it does not specify text communications between the vendor and the buyer. However, that void, the Examiner believes is easily filled by the teaching in Grady, which the Examiner asserts is from the same field of endeavor.

Respectfully, Smith is distinct from the claimed invention for other reasons as well. Smith teaches a system (see drawing below), which is directed to an arrangement for supplying audio and video signals from separate sources to a video telecommunications station.

This invention relates to an arrangement for supplying audio and video signals from separate sources to a video telecommunication station. In one embodiment, the audio is supplied, for example, by

a stock broker or agent, while the video is supplied by a separate source controlled by the agent. Advantageously, pre-planned video from a common source, or video from a separate camera, can be supplied to a caller along with the audio message from the agent.



Smith does not teach a commercial transaction communication control system in the context of the claims here. The Examiner argues that Smith is directed to “video/audio communication between a customer and a stockbroker.” Applicant respectfully submits that Smith teaches video and audio from separate sources, which is distinct from Applicant’s system. Moreover, claims 17 and 33 recite a combination of limitations (pointed to below) that are simply not met by Smith. Grady teaches a communications system supporting shared multimedia sessions. Note that Grady is directed to:

[a] public switched telephone network for providing information from a multimedia information server to any one of a plurality of

subscriber premises, comprises a central office receiving multimedia information signals from a multimedia information server and orders from a prescribed subscriber. The central office includes a gateway system for conveying routing data in response to subscriber orders and a switch for routing multimedia signals from the server to the prescribed subscriber in accordance with the routing data. An interface at the central office transmits and receives audio telephone service signals, subscriber control signals and digital multimedia information signals on first, second and third signal channels. Each subscriber premises includes an interface for transmitting and receiving audio telephone service signals, subscriber control signals and digital multimedia information signals on the three signal channels. A plurality of subscriber local loops interconnect each subscriber interface and the central office interface. Multimedia information is collected from information providers and stored at media servers that provide a library of data and control sessions. Software modules at the media servers and resident terminals enable interactive multimedia session building, sharing of databases and joint authoring of multimedia presentations.

Neither reference, alone, or in combination, teach the claimed steps of 1) storing data associated with an active buyer, in a memory associated with the commercial transaction communication control system including buyer identification data and commercial transaction data that includes request data entered by the active buyer and 2) selectively processing to fulfill a request the commercial transaction data by 2a) first identifying select data including dynamic video and text data relating to one or more vendors and then 2b) providing the dynamic video and text to the active buyer responsive to said commercial transaction data and in some instances to fulfill the request selectively routing the active buyer via multiple commercial transaction control systems to communicate with widely distributed vendors with capabilities to route calls between vendors to fulfill a request.

Specifically, with regard to claims 18-19 and 22-24, the Examiner asserts that Smith provides a camera at each videophone station to provide direct, point-to-point video communication (col. 4, lines 24-28). With regard to claims 20 and 25, in Smith, the Examiner indicates that the video image can include a dynamic graph associated with the vendor's company (col. 6, lines 44-49). With regard to claims 21 and 33-41, the Examiner asserts that Grady teaches the multi-media presentation as including still images and plain text (col. 1, lines

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35-38; and col. 5, lines 8-9). With regard to claims 26 and 42, the Examiner asserts that Smith provides for real-time audio communication via videophone stations (col. 3, lines 5-19).

Regarding claims 27-29 and 43-45, the Examiner asserts that Smith provides for the caller entering a service code or real-time input to select a desired video source signal (col. 4, lines 45-48, 62-66; col. 5, lines 7-22). Claims 18-19 and 22-24, claims 20 and 25 and claim 21 depend on claim 17 and are allowable by virtue of their dependency on claim 17. Claims 34-41 depend on claim 33 and are allowable by virtue of their dependency on claim 33, which is distinguished above from the asserted art.

With respect to claims 30-32 and 46-48, also rejected under 35 U.S.C. 103(a), the Examiner asserts that these claims are unpatentable over Smith in view of Grady, as applied to claims 27 and 43 above, and further in view of Brown et al. (US 4,972,318, hereafter "Brown"). Claims 30 and 46 are canceled, therefore, the rejection of these claims is moot. Claims 31 and 32 depend on claim 17. Claims 47 and 48 depend on claim 33. Dependent claims 31-32 and 47-48 are allowable for the reasons urged above with respect to independent claims 17 and 33.

Favorable consideration and allowance of the rejected claims is respectfully solicited. In the event outstanding issues remain, the undersigned solicits an interview with the Examiner to resolve them.

Respectfully submitted,

Dated: August 12, 2009

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